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# **Influencing trade policy in a multi-level system – Understanding corporate political activity in the context of global value chains and regime complexity**

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## **ABSTRACT**

The increasing impact of the international trade governance regime on the domestic regulatory sphere and the growing inter-linkages between international companies through their involvement in global value chains, have complicated corporate political activity (CPA) in the trade arena and changed the way companies interact with governments in this context. This paper draws on several recent examples of novel forms of CPA in trade conflicts at both multilateral and regional (EU) level, to provide an updated conceptual framework of trade policy CPA, which takes account of the increasing complexity and interconnectedness in the world economy. We highlight, in particular, the fact that this changing context means that ‘domestic’ interests are often heterogeneous. The international linkages of a firm may dictate trade policy preferences more than its nationality. In addition, non-government actors increasingly react to globalization by mobilizing transnationally, with positive and negative impacts for CPA. CPA strategy has adapted to that reality, in both home and host country contexts, leading to novel cross border alliances and even political activity in countries where, although local presence is relatively low, companies find common interests.

## 1 Introduction

Companies' interactions with their non-market environment have attracted much academic attention in recent decades. Baron defined the non-market environment as including 'those interactions that are mediated by the public, stakeholders, government, the media and public institutions.'<sup>1</sup> He argued that the effective integration of market strategy with non-market strategy (NMS) optimized firm performance. Since then the field of research on NMS has evolved considerably. A key focus of this research has been on Corporate Political Activity (CPA), which explores interactions with government and public institutions i.e. '...corporate attempts to shape government policy in ways favorable to the firm.'<sup>2</sup> Much work on CPA has focused on trade policy, which has historically been a pivotal public policy affecting business.<sup>3</sup> One of the key contributions is Baron's own work. In particular his conceptual framework on trade policy-making, and the work based on it, has been highly influential in theory building in the field of CPA.<sup>4</sup>

The other key NMS research stream explores Corporate Social Responsibility (CSR), defined as '...context-specific organizational actions and policies that take into account stakeholders' expectations and the triple bottom line of economic, social, and environmental performance.'<sup>5</sup> This research has tended to focus more on interactions with the public, stakeholders and the media.<sup>6</sup> Several scholars have recently called for a more effective integration of these two streams, which have developed rather independently of each other<sup>7</sup>.

In this paper, we focus primarily on the CPA aspect of NMS, with an emphasis on trade policy. Since Baron published his seminal work, the range of issues covered by trade policy has expanded, making it pertinent to a wider range of business and non-business interests.<sup>8</sup> At the same time, globalization and the emergence of global value chains (GVCs) have changed the

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<sup>1</sup> Baron, 1995 p.47

<sup>2</sup> Hillman et. al., 1995

<sup>3</sup> Baron 1995, 1997; Vogel 1996.

<sup>4</sup> Baron 1995, 1997

<sup>5</sup> Aguinis and Glavas, 2012.

<sup>6</sup> See Frynas and Stephens 2015 and Scherer et al 2016 for recent reviews

<sup>7</sup> Den Hond et. al. 2014; Lock and Seele, 2016.

<sup>8</sup> Woll and Artigas, 2007

nature of linkages both between and within firms and with their home and host governments, as well as encouraging non-governmental organizations (NGOs) to militate at the international level. As a result of these different factors CPA in the trade arena has changed significantly. Yet Baron's trade policy-making conceptual framework and the work based on it, has not been revisited to take account of these evolutions. In this paper we will argue that some of the assumptions behind Baron's framework now require revision. We focus on the following question: *how have the globalization of value chains and increasing coverage and complexity in international trade governance impacted on CPA in the trade policy arena?* In answering this question, we develop a modified conceptual framework of CPA and trade policy, which integrates today's more global and complex context in terms of production, stakeholders and trade governance.

Our modified framework will integrate two important evolutions, which are absent in Baron's conceptualisation and most of the work building on it. Firstly, the globalisation of production structures and trade governance and the subsequent emergence of transnational and multilateral lobbying and secondly, the expansion of the trade policy arena beyond classic trade issues and traditional company actors.

In terms of the first evolution – globalisation - most existing work on CPA and trade policy is based on a classic two country: two industry model (in Baron's case, US/Japan: Kodak/Fujifilm), with lobbying focused on the home country and the bilateral relationship. Baron acknowledged that the 'home' country of company headquarters may not be the best perspective and that the 'rent chain' might be a better lens to view the likely political influence of a company.<sup>9</sup> This concept of mobilizing the rent chain for more effective CPA was further developed in a later paper, where he noted: 'In addition to sharing the cost of nonmarket strategy more broadly, *rent chain mobilization* can contribute to the *coverage* a firm or coalition can generate.'<sup>10</sup> However, he did not incorporate international activity into his framework, where policy-making remains essentially domestic – the *coverage* of a rent chain coalition was defined in terms of number of (US) legislative districts mobilized. We argue that the expansion of global production

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<sup>9</sup> Baron 1997: p.158

<sup>10</sup> Baron 1999 : p. 22 emphasis in original

networks has considerably expanded the potential for interest mobilization beyond the home country. In the Kodak/Fuji case, the rent chain and the home country coincided, a situation that was common at the time. However in recent years we have seen an increasing number of Multi National Enterprises (MNEs) undertaking CPA outside of their home country, in response to threats and opportunities along their 'rent chain'.

In addition, another factor anticipated in Baron's work – the growing importance of action at the multilateral (the World Trade Organization [WTO]) rather than the bilateral level<sup>11</sup> – has also become much more generalized in CPA. Particularly since with the founding of the WTO in 1995 and the establishment therein of a more effective and binding Dispute Settlement Body (DSB). We argue that the internationalization of both production and trade governance need to be more effectively integrated into our understanding of how companies interact with the political process through their nonmarket strategies.

The second important evolution which we highlight in this paper is how 'trade' policy has expanded well beyond classic 'trade' issues and now involves a much wider range of actors.<sup>12</sup> As Vogel pointed out in 1996,<sup>13</sup> CPA expanded because the government's role in the economy increasingly incorporated issues with direct impacts on companies' business models, like health, safety and environmental protection. Since then, the trade policy remit has itself expanded, Increasingly the DSB is called upon to rule on domestic regulation on precisely the issues Vogel highlights, in view of their links to trade. There is now a growing body of jurisprudence from the WTO DSB relating to the compatibility of national regulation on key issues like environmental protection and public health with member states' WTO commitments. This has widened the trade policy remit, but also increased its relevance to civil society actors, who have expanded their transnational advocacy.<sup>14</sup> Given their potential to impact on national governments' legislative autonomy, WTO judgments have been subject to extensive scrutiny by academics and civil society.<sup>15</sup> Thus in tandem with an expansion of the domestic political agenda affecting

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<sup>11</sup> Baron 1997: p.164

<sup>12</sup> Woll and Artigas, 2007

<sup>13</sup> Vogel 1996

<sup>14</sup> Betzold 2014; Eilstrup-Sangiovanni and Phelps Bondaroff 2014; Mukherjee and Ekanayake 2009; Rietig 2016.

<sup>15</sup> e.g. Howse and Levy 2013; Read 2005; Vogel 2013; Davis, 2009.

business, that same agenda has increasingly been subject to scrutiny by the international trade regime, bringing trade policy once more center stage in terms of MNEs' concerns and providing multi-level arenas for CPA on regulatory issues.<sup>16</sup>

Empirically, this paper draws on analyses of a series of recent trade disputes at multilateral and regional level, which highlight how globalization, GVCs (as 'rent chains' are now more commonly termed) and increasing regime complexity have changed the CPA strategies of MNEs. Based on these analyses, we propose a revised model of international CPA in the trade policy arena, which takes into account the evolutions which we identify. Our focus is on trade policymaking, however the important characteristics which we identify are also relevant to understanding CPA more widely, as well as to other areas of NMS. For example in the area of CSR, recent research has highlighted how the rise of international NGO movements and extensive networks between stakeholders, has forced companies to adapt their strategies.<sup>17</sup> In addition, the evolutions we highlight – i.e. the growing influence of NGOs in regulatory debates, the variety of interests within domestic industry and the potential for companies to engage in multi-level CPA – have the potential to impact on CPA in many different issue areas, from environmental protection to taxation policy. Our objective therefore, is to contribute, not only to analysis of trade policy making, but also our wider understanding of how CPA is adapting to a more integrated and multi-level global context.

## **2 Research on CPA in the trade policy arena**

Research on CPA is extensive and growing. As pointed out by several scholars, CPA literature does not rest on a single unique theory. Rather a variety of different theoretical lenses and methodological approaches have been used to interpret firms' political behavior.<sup>18</sup> Our objective is not to summarize this wide body of work. There are several recent comprehensive

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<sup>16</sup> Woll and Artigas, 2007.

<sup>17</sup> Lucea and Doh 2012.

<sup>18</sup> Doh et al. 2012; Hillman et al, 2004 ; Lawton et al. 2013 ; Shaffer, 1995 ; Mellahi et. al. 2016

reviews of the literature.<sup>19</sup> They highlight that existing research has tended to focus on why firms engage in CPA and whether it affects performance,<sup>20</sup> as well as understanding the context of CPA, especially the impact of institutions.<sup>21</sup> Our focus is less on the former questions of the antecedents and outcomes of CPA, than on the latter, of how to better understand its evolution in the context of shifting institutional contexts.

In terms of the different models and typologies presented in the literature,<sup>22</sup> our objective is to contribute to understanding the interaction between CPA and firms' evolving institutional context, specifically the work which Lawton and his co-authors identify as seeking to '...help explain the process of change and adaptation of CPA in the context of globalization...'<sup>23</sup> As their review highlights, much of the work in this research stream has looked at CPA in emerging markets and has focused on the national level. The potential for multilateral trade liberalization to change government business relations is noted in their review, however work in the area was little explored.<sup>24</sup> This is unfortunate, as CPA needs to adapt, not just to the rise of emerging markets, but also to the expansion of GVCs and global governance. Several existing analyses, which we will draw on in this paper, contribute to our understanding of this process of change. This paper seeks to better integrate these insights into our understanding of CPA.<sup>25</sup>

The aforementioned work by Baron<sup>26</sup>, is of course a seminal contribution to existing understanding of CPA. It has been very influential in theory building. His work draws heavily on cases of company CPA (mainly in the US) related to trade policy, or intergovernmental negotiations.<sup>27</sup> Baron's work generated an extensive body of literature. Much of this research has focused on: a) the domestic context, analyzing how companies seek to influence their

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<sup>19</sup> Shaffer, 1995; Hillman et. al. 2004; Lawton, McGuire and Rajwani 2013; Lux, Crook and Woehr 2011; Mellahi et al, 2016.

<sup>20</sup> Hillman et. al. 2004; Lux, Crook and Woehr, 2011; Mellahi et al, 2016.

<sup>21</sup> Doh, Lawton and Rajwani, 2012; Lawton, McGuire and Rajwani 2013;

<sup>22</sup> Doh et al, 2012 ; Hillman et al, 2004 ; Lawton et al, 2013; Mellahi et. al. (2016)

<sup>23</sup> Lawton et al, 2013 : 93.

<sup>24</sup> The only paper referenced in Lawton et al's (2013) review, is one on how WTO membership transformed government business relations in Brazil: Shaffer, Ratton Sanchez and Rosenberg, 2007.

<sup>25</sup> Doh, McGuire and Ozaki, 2015 ; Davis 2009; Lawton et al. 2009; Shaffer, 2003.

<sup>26</sup> Baron 1995, 1997.

<sup>27</sup> These are, in Baron (1995) the Cemex antidumping case, Toy'R'Us lobbying of the government to put pressure on Japan to revise regulations on retailing and in Baron (1997), Kodak's filing of a Section 301 case in the US to force the government to address restrictions on their market access in Japan.

government;<sup>28</sup> b) the factors which affect such influence;<sup>29</sup> and c) the role of non-business groups in counteracting business led CPA.<sup>30</sup> However, we will argue that the nature of CPA in the trade arena has evolved considerably since Baron's early conceptualisation and that a wider set of factors need to be integrated into our conceptual framework of CPA in this arena.

Firstly, most existing work views trade lobbying as an internal domestic activity, where a given government's political choices are the result of lobbying by domestic political actors.<sup>31</sup> The conventional view is that import-competing firms lobby domestically for protectionist policies, while exporters encourage domestic decision makers to negotiate trade deals that increase access to foreign markets.<sup>32</sup> In other words, the assumption is that independent, domestic based company lobbying is the norm in the trade arena. A lack of trust is assumed to exist across companies and, even more so, across borders, which precludes cooperative CPA beyond a limited sectoral or local group<sup>33</sup>. The global expansion of MNEs economic activities has modified the incentives for lobbying across companies, countries and non-state actors. Through their geographically dispersed investment and sourcing, MNEs now have extensive political leverage with host governments. In addition their activities have impacts on sustainable development, which NGOs may support or challenge. They can therefore create alliances across a wider range of actors with shared strategic interests, many of whom may be 'foreign'.

Secondly, and related to our first point, the growing importance of GVCs complicates the concept of company and national interests, with effects on the instigators and targets of CPA. At the same time as Baron was developing his ideas on trade policy-making, Gary Gereffi was starting what was to become a wide and rich research stream on the emergence of GVCs.<sup>34</sup> It is now well accepted that "[t]he fragmentation of production across [GVCs] and the importance of foreign inputs in virtually all sectors,"<sup>35</sup> have become a dominant economic reality in the 21st

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<sup>28</sup> e.g. Brook, 2005; Lindeque and McGuire 2010; Solis, 2013; Thacker 2000.

<sup>29</sup> e.g. Hillman, Long and Soubeyran, 2001; Lindeque and McGuire 2010; Schuler and Rehbein 2011; Solis, 2013.

<sup>30</sup> e.g. Farrand 2015; Schnietz and Nieman 1999.

<sup>31</sup> See, for example, Schnietz and Nieman 1999 on lobbying around the US Fast Track Authority and Brook 2005 on US steel sector lobbying.

<sup>32</sup> Dur 2010; Friedan and Rogowski 1996; Goldstein and Martin 2000.

<sup>33</sup> Grossman and Helpman 2002 p.149

<sup>34</sup> Gereffi 1995; Gereffi 1999; Gereffi, Humphrey and Sturgeon 2005.

<sup>35</sup> Taglioni and Winkler 2014: p. XV



century. We argue that, as a result of the globalization of production systems, the aforementioned traditional model of trade policy as a political battle between import-competitors and exporters, is no longer generalised. GVCs have given rise to the political mobilization and empowerment of a wider set of societal interests. In particular ‘import dependent firms’ (IDFs), defined as: “...those which rely on income created by imported goods or on the import of intermediate products for their production process,”<sup>36</sup> have increasingly become politically active at home and abroad. This trend for consuming industries to mobilize and defend their preferences in the political arena was already evident in the early years of this century, when car manufacturers complained of the negative impacts of anti-dumping action on steel imports.<sup>37</sup> However, as we will demonstrate below, there are now several recent cases, where CPA by import-dependent firms has been more pro-active and organized.

In addition, GVCs have increasingly been subject to scrutiny and activism by civil society actors in relation to their impact on the environment and potential to undermine labor standards, especially in developing countries.<sup>38</sup> Much transnational NGO advocacy has focused on environmental policy.<sup>39</sup> However, civil society has also been active in the trade policy arena, both in mobilizing against MNEs, when interests are seen to be divergent<sup>40</sup> and working with them, especially in pursuit of protection to safeguard employment.<sup>41</sup> We argue that the expansion of GVCs and the increasing power of multilateral institutions have encouraged NGOs, like MNEs, to move beyond the domestic arena and militate transnationally, with corresponding impacts on trade policy.

Thirdly, existing analysis of transnational lobbying (i.e. firms lobbying a foreign government) in the trade policy context, has tended to assume, rather intuitively, that the objective of that lobbying would be market opening in the lobbied state. For example, research has found foreign

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<sup>36</sup> Eckhardt 2013: p.990.

<sup>37</sup> Brook 2005.

<sup>38</sup> Bair and Palpacuer 2012; Doh et al. 2015; Plank, Staritz and Lucas 2009.

<sup>39</sup> Betzold 2014; Eilstrup-Sangiovanni and Phelps Bondaroff 2014; Rietig 2016.

<sup>40</sup> See Schnietz and Nieman 1999 on the role of environmental and labour activists in the successful campaign to deny fast track authority to the Clinton administration

<sup>41</sup> See Brook 2005 on the role of labour unions in a successful campaign to protect the US steel industry.

firms to be active in lobbying US policy makers to lower barriers in their domestic market,<sup>42</sup> while empirical analysis has found a correlation between lobbying by foreign companies and lower barriers to related imports.<sup>43</sup> Foreign lobbyists, like their domestic equivalents, are assumed to be seeking *domestic* policy change, especially lower import tariffs. Yet, as we will highlight below, this is not always the case. The fact that international trade dispute settlement procedures are inter-state means that any state can bring a case against another state, but companies cannot pursue states at the WTO. Thus corporate access to the DSB depends on the company's capacity to persuade a state to take a case.<sup>44</sup> This institutional reality opens another avenue for CPA, which is quite distinct from the domestic policy space and narrow tariff-related trade interests.

Finally, the emergence of a stronger multilevel governance system within the WTO both expands the reach of 'trade' policy beyond classic 'trade' issues and increases regime complexity in the area.<sup>45</sup> The WTO and its DSB in particular, provides a new level of policy-making, or at least policy oversight of domestic policy. This opens the possibility for company agency on trade policy well beyond the classic issues of domestic market protection or foreign market opening. In addition, as tariffs have fallen over time, barriers to trade are more likely to emanate from 'behind the border issues' of domestic regulation,<sup>46</sup> which have increasingly been challenged in the DSB.<sup>47</sup> Disputes have covered regulations seeking to protect specific species like sea turtles, dolphins and seals, as well as consumers and the environment.<sup>48</sup> Thus WTO law has come to impact on a growing number of sectors across its member states. This development provides a new option for MNEs CPA seeking regulatory change.<sup>49</sup> In this context the national level may no longer be the most appropriate or most efficient arena to challenge domestic regulation.<sup>50</sup>

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<sup>42</sup> Destler and Odell 1987.

<sup>43</sup> Gawande, Krishna and Robbins 2006; Kee, Olarreaga and Silva 2007.

<sup>44</sup> Lawton, Lindeque and McGuire 2009: p.11

<sup>45</sup> Davis, 2009.

<sup>46</sup> Cadot and Webber, 2002; Winslett 2016; Woll and Artigas, 2007.

<sup>47</sup> Lawton et. al. 2009.

<sup>48</sup> Howse and Levy 2013; Sykes 2014.

<sup>49</sup> Windsor 2007.

<sup>50</sup> Davis, 2009

### 3 Research question and approach

As indicated in the introduction, our key research question is ‘How have the globalization of value chains and increasing coverage and complexity in international trade governance impacted on CPA in the trade policy arena?’ Specifically we seek to draw on analyses of CPA in recent trade disputes to highlight how company strategy has responded to these joint institutional evolutions. Building on these findings we propose a revised conceptual framework of trade policy. We chose four cases to inform our analysis, on the basis of two key criteria. Firstly that some or all of the novel elements which we highlight above can be seen to have influenced company strategy and secondly that they were high profile and therefore relatively well documented, both by the media and, with the exception of the very recent Plain Packaging case, academic researchers<sup>51</sup>. We look at the following disputes: the WTO challenge by Antigua of US online gambling legislation, the European Union (EU) -China conflict on anti-dumping (AD) action in footwear, the EU-China solar panel AD conflict and the WTO challenge by five countries to Australia’s plain packaging legislation for tobacco products.

This paper is a conceptual paper and, as such, is mainly based on secondary data. However, one or both authors have undertaken primary research on all of the cases covered in this paper, including interviews with the key actors, which inform our analysis. We are well aware of the difficulties of generalizing from case studies, however an increasing number of scholars consider that social sciences have become too reliant on quantitative research and have argued that qualitative case studies can provide useful insights for theory building<sup>52</sup>. In one of the first attempts to summarize CPA literature, Shaffer noted that case studies had provided important contributions and defended their importance: ‘As a research problem, political influence activities may be particularly hard to describe using statistical methods’<sup>53</sup>. Indeed many important contributions to the literature on CPA have drawn on case study evidence<sup>54</sup>, not least

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<sup>51</sup> Due to this lack of existing research, the section which explores this latter case is slightly longer than the other three.

<sup>52</sup> George and Bennett, 2005

<sup>53</sup> Shaffer, 1995: 509.

<sup>54</sup> For example: Eckhardt and de Bievre 2015; Lawton et al, 2009 ; Lucea and Doh, 2012; Shaffer and Hillman, 2000 ; Kingsley, Vanden Bergh and Bonardi, 2012.

Baron's own work.<sup>55</sup> Our aim is to build a new conceptual framework, by generating plausible propositions based on case study evidence, 'which do not make sense when viewed in the light of an initial theoretical framework.'<sup>56</sup> This approach, often referred to as abductive reasoning, is a well-accepted basis for theory-building from case studies.<sup>57</sup>

#### **4      Evolving towards more complex and transnational policy-making – some empirical examples of changing patterns of CPA**

This section will explore the four chosen cases of trade conflicts. To put them into context, we will briefly highlight the main features of the Kodak-Fuji case on which Baron's framework was based. The core of that case was the alleged tolerance of anti-competitive practices in the Japanese market, which restricted Kodak's market access, enabling Fujifilm to make abnormal profits, with which they subsidized sales elsewhere. Kodak chose to challenge these practices, not in Japan, where it had little political influence, but in its home country, the US, through a Section 301 market opening petition. The US administration ruled in favor of Kodak and subsequently complained about Japan's anti-competitive practices in the WTO. Kodak's CPA in the case was multifaceted and extensive, but essentially domestic. Although they did seek to undertake CPA in Japan, it seems to have had little impact.<sup>58</sup>

##### *Antigua-US gambling*

In 2001, the US introduced several state and federal laws to severely restrict online sports betting. Under the new rules, it was prohibited for firms (partly) based in other WTO member states to provide cross-border betting services to US customers. However, betting offered on horse races by fully US based companies and online lotteries in some US states remained legal. In 2003, Antigua and Barbuda – a small twin-island state in the Eastern Caribbean – brought a

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<sup>55</sup> Baron, 1995; 1997

<sup>56</sup> Andersen and Hanne, 2010: 52.

<sup>57</sup> See e.g. Andersen and Hanne, 2010; Reichertz, 2004.

<sup>58</sup> Baron 1997

WTO DS case against the US, alleging that the new US betting laws were in violation of the principle of “national treatment” and hence WTO-incompatible.<sup>59</sup>

The case is interesting in light of our paper because of the key role of MNEs and their transnational lobbying activities. Small less developed countries, such as the one involved in this case, rarely use the DSB, given the high costs of WTO litigation.<sup>60</sup> Therefore, external factors seemed likely to be at play and, indeed, research has shown that *transnational* lobbying by a group of US online betting firms played a decisive role in Antigua’s decision to bring the WTO case.<sup>61</sup> Their choice of to lobby a third country government to challenge legislation in the WTO was unusual. As indicated earlier, litigation in the WTO has typically been the result of *domestic lobbying* by powerful import-competing industries seeking protection from their home government<sup>62</sup> or large domestic exporting firms seeking secure access to foreign markets.<sup>63</sup> The political dynamics in the *Antigua-US gambling case* were very different.

At the end of the 1990s, attracted by the supportive institutional environment in Antigua, many US online betting firms had moved (part of) their operations there to serve their American customers. . When the US introduced its protectionist gambling laws in 2001, fifty of these firms formed an ad-hoc interest group – the Antigua Online Gaming Association (AOGA) based in El Paso, Texas – and engaged in an intensive lobbying campaign to convince the Antiguan authorities to file a WTO case.<sup>64</sup> There is strong evidence that the lobbying efforts of AOGA were crucial in persuading the government to bring the case. In addition it has been confirmed that AOGA paid all the legal costs and that their lawyer represented Antigua during the entire case, helping to overcome the resource constraints of this small country.<sup>65</sup>

A key reason why the US online gambling companies turned to a foreign government to file a WTO complaint was that their initial efforts to convince the US authorities (i.e. their home government) to lift the trade barriers were unsuccessful. This appears to be largely because of

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<sup>59</sup> Thayer 2004.

<sup>60</sup> Lindeque and McGuire 2007

<sup>61</sup> Eckhardt and De Bièvre 2015.

<sup>62</sup> Baron 1997; Zimmerman 2011.

<sup>63</sup> Bown 2009.

<sup>64</sup> Eckhardt and De Bièvre 2015..

<sup>65</sup> Eckhardt and De Bièvre 2015.

their lack of political resources in the US and their limited perceived contribution to the US economy. In addition, gambling, because of its negative social externalities, is considered a 'sin' industry.<sup>66</sup> For gambling, and other 'sin' sectors like tobacco and alcohol, this status involves certain costs,<sup>67</sup> including low political leverage. Finally, the online gambling firms faced powerful opposing actors at the domestic level: traditional gambling companies (in particular casinos), several of the major professional sports league associations and religious groups.<sup>68</sup> This coalition of opposing domestic interests, including some very active NGOs, further undermined their efforts to secure support from their home government, leaving them with little choice but to target the host government.

In sum, the Antigua-US gambling case challenges the conventional view that, when seeking redress in an international trade dispute, firms lobby their own government. Unlike Kodak, these US MNEs were not seen as important actors in their domestic economy and faced strong opposition from powerful domestic interest groups. They therefore chose to challenge the legislation at multilateral level, through the state where they based much of their economic activity. The small size and power of that state was counteracted by the resources of the MNEs mobilized in support of their challenge. The fact that Antigua won the challenge on several key points indicates that such a strategy can be effective, although so far the US has failed to bring its law into compliance, underlining the limitations of even the WTO's legal machinery.

### *EU-China Footwear*

In 2005 the quota system which had restricted trade in many fashion goods came to an end and trade between WTO members was liberalized. It quickly became evident that the liberalization was impacting strongly on exports from China, which increased very rapidly to most affected markets.<sup>69</sup> Intense pressure was put on policy makers by local manufacturers in both the EU and the US to react. In the case of the EU footwear sector, the outcome was an industry request for an AD investigation to secure protection against 'dumped' exports. Further to the ensuing

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<sup>66</sup> Liu, Lu and Veenstra 2014.

<sup>67</sup> Leventis, Hasan and Dedoulis 2013.

<sup>68</sup> Schwartz 2005.

<sup>69</sup> For further explanation of the evolution of trade in the textiles sector see Lawton and McGuire 2005.

investigation, the decision was made in 2006 to impose anti-dumping duties (ADDs) on Chinese and Vietnamese footwear. The case has been subject to several in-depth analyses which we will draw on here.<sup>70</sup> These studies highlight both how divisive the case was for EU Member States<sup>71</sup> and how active a variety of companies were in lobbying both for and against the duties.<sup>72</sup>

Importantly, the domestic import-competing producers who were in favor of ADDs were not alone in lobbying EU governments and the European Commission. Companies with vested interests in low cost imports also mobilized and lobbied against protection. They established two ad-hoc lobbying platforms: the European Branded Footwear Coalition (EBFC) representing branded footwear and the Footwear Association of Importers and Retail chains (FAIR) mainly representing retailers. In addition the pre-existing Federation of the European Sporting Goods Industry (FESI) lobbied heavily (and successfully) to exclude sport shoes from the investigation.<sup>73</sup>

One of the notable aspects of this case is that import-dependent firms (domestic retailers and brands operating within GVCs) can mobilize and lobby effectively. This is counter to received wisdom that domestic import-competing or export oriented producers are essentially the key actors lobbying in the trade policy arena. Lawton and McGuire have argued that the propensity of the EU textiles sector to lobby for trade protection has been mitigated by the availability of other adjustment strategies to cope with trade liberalization, including out-sourcing.<sup>74</sup> A similar process has resulted in a more diverse range of policy preferences within the footwear sector. As a recent analysis concluded ‘...the conventional wisdom of political economy, that import-competing firms can overcome collective action problems in a way that consumers and others cannot and drive protectionist policies, is no longer a fully accurate description of trade politics.’<sup>75</sup> Eckhardt argues that import-dependent firms in particular are increasingly mobilizing politically and postulates that they do so in cases where the costs of adjustment are high (there are limited alternative sources) and the costs of mobilization are low (an existing lobby group

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<sup>70</sup> Curran 2009; Dunoff and Moore 2014; Eckhardt, 2011.

<sup>71</sup> Curran 2009; Dunoff and Moore, 2014.

<sup>72</sup> Eckhardt 2011.

<sup>73</sup> Eckhardt 2011.

<sup>74</sup> Lawton and McGuire 2005.

<sup>75</sup> Dunoff and Moore 2014: p. 177

exists, or firms are relatively concentrated and easy to mobilize).<sup>76</sup> Both conditions were met in the footwear case.

What makes the footwear case particularly interesting, in light of this article, is that it also involved multilateral action. The procedure for investigating Chinese (and Vietnamese) companies in anti-dumping cases is different to most other countries, as they are not yet considered by the EU to be Market Economies.<sup>77</sup> This particularity became the basis of a WTO DSB challenge by China. There is convincing evidence that EU footwear retailers, together with their Chinese suppliers, were instrumental in persuading the Chinese government to launch what was only their second WTO case against the EU.<sup>78</sup> Their objective was clearly to avoid the continuance of the AD action and reduce the chances of future action. In as much as the WTO ruled in favor of China on some aspects of the case, while the EU ADDs expired without challenge in due course, their objectives seem to have been achieved.

Thus the footwear case challenges the classic view of CPA in the trade policy arena in two ways. Firstly, import-dependent firms in the EU overcame the intrinsic difficulties with collective action to lobby against trade protection and secondly, once they failed to secure an overtly positive outcome domestically, these same EU companies engaged in transnational CPA and lobbied a foreign government to challenge their own governments' handling of the case at the WTO.

### *EU-China solar panels*

In July 2012 a coalition of EU solar panel producers who had mobilized together in an ad-hoc alliance called Prosun, filed a complaint with the European Commission alleging that Chinese solar panels were being sold on the EU market at dumped prices. The complaint followed impressive growth in Chinese solar exports globally and a similar case in the US, where ADDs had been imposed a few months earlier. Almost immediately another ad-hoc lobby group – the Alliance for Affordable Solar Energy (AFASE) - was formed to oppose the proposed AD action.

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<sup>76</sup> Eckhardt 2013; see also Eckhardt 2015; Yildirim et al, 2017.

<sup>77</sup> Dunoff and Moore 2014.

<sup>78</sup> Eckhardt and De Bièvre 2015.



These trade tensions in the solar sector have also been subject to quite extensive analysis, which has highlighted the strong interdependence between the EU and Chinese solar panel industries, as well as the extent to which companies adjusted their production structures in response to new restrictions.<sup>79</sup> Studies have also highlighted the controversy around the proposed imposition of ADDs on solar panels, in the EU<sup>80</sup> and the US.<sup>81</sup> The arguments mobilized by AD opponents were similar to those in the footwear case: increasing the costs of solar panels would disadvantage EU consumers, retailers and installers. However, there was a wider group of interests involved in AFASE, which had over 800 members by the end of the case. These included not just importers, but exporters of raw materials and manufacturing machinery to the solar panel industry in China, as well as Chinese exporters themselves. It was therefore an inter-sectoral company grouping, but also a transnational one, quite a rare undertaking outside of regional structures like the EU. The nature of the product also ensured that the interests of the environmental lobby were mobilized. Environmental NGOs, although they did not join AFASE, issued a supportive press release underlining that low cost solar energy was necessary if the EU was to meet its commitment to transition from carbon intensive energy sources.<sup>82</sup>

It is the cross-country element of the lobbying coalition, which is most novel in this case. It is a clear example of transnational CPA. That EU retailers in the footwear case could overcome their collective action problems to lobby together was understandable, given their high costs of adjustment (few alternative high volume/low cost sources) and low costs of mobilization, not least because they were relatively concentrated large companies.<sup>83</sup> That Chinese exporters and their EU customers should lobby collectively in a relatively fragmented industry is more surprising. However, it is well established in the literature that a perceived threat to material interests, as a result of changes in market conditions, is a primary condition affecting a firm's

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<sup>79</sup> Curran 2015; Dunford et. al. 2013; Lewis 2014.

<sup>80</sup> Kolk and Curran 2016.

<sup>81</sup> Carbaugh and St Brown 2012.

<sup>82</sup> WWF 2013.

<sup>83</sup> Eckhardt 2011.

decision to lobby.<sup>84</sup> The potentially high costs of adjustment to new trade costs, were certainly a key motivation. For EU importers, there were few alternative sources with China's production capacity.<sup>85</sup> For the Chinese exporters, they were highly reliant on the EU market, where their business model was under threat.<sup>86</sup> As the case advanced, the involvement of Chinese suppliers became less evident, partly in response to heavy criticism by the domestic solar lobby of the involvement of 'foreign' companies in the political process.<sup>87</sup> This experience shows that, even if transnational groupings succeed in overcoming their collective action problems to lobby together, certain MNEs still face problems of legitimacy in the domestic political process linked to their 'Liability of Foreignness'.<sup>88</sup>

Thus the solar case, like the footwear case, highlighted the fact that differential integration into GVCs is increasingly changing the balance of interests within 'domestic' industry. In addition, it is creating the conditions for both import-dependent firms and foreign companies to engage more actively in the political process in defense of openness. The case shows that, under certain circumstances, foreign companies may become involved in CPA. The Chinese companies in this case were instrumental in establishing the AFASE alliance. Rather than relying on their home government to put pressure on the EU, they actively engaged in the political process within the EU.

#### *WTO challenge by five countries to Australia's plain packaging legislation*

In 2012 Australia became the first country in the world to introduce a legal requirement that cigarettes and other tobacco products be presented in plain packaging (PP), as a public health measure to reduce tobacco consumption. This move was vehemently opposed by the tobacco industry who argued that their intellectual property was being appropriated. They challenged

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<sup>84</sup> Raymond Vernon 1966,p. 200 explained it thus: "...any threat to the established position of an enterprise is a powerful galvanizing force to action; in fact...[a] threat in general is a more reliable stimulus to action than an opportunity is likely to be." Since Vernon's observation, research has shown that firms are indeed much more likely to lobby when faced with potential losses in revenue than in pursuit of a lucrative market opportunity. See e.g. Dür 2010.

<sup>85</sup> Curran 2015.

<sup>86</sup> Kolk and Curran 2016.

<sup>87</sup> Kolk and Curran 2016.

<sup>88</sup> Zaheer 1995.

Australia's legislation on several levels. Firstly, in Australia itself, where Japan Tobacco International (JTI) and British American Tobacco (BAT) mounted an unsuccessful challenge in the Australian High Court.<sup>89</sup> The next challenge was bilateral –through the Hong Kong-Australia Bilateral Investment Treaty (BIT) – where Philip Morris International (PMI) challenged the new law.<sup>90</sup> This was rejected for jurisdictional, rather than substantial reasons.<sup>91</sup> Finally, at the multilateral level, the Ukraine, Honduras, the Dominican Republic, Cuba and Indonesia brought a series of DSB cases against Australia in the WTO. Their claims centered on the alleged infringement of several articles of the Trade Related Intellectual Property Rights (TRIPs) agreement, due to the banning of company logos and trademarks.<sup>92</sup> This case is still ongoing, although Ukraine has withdrawn its complaint following a change of government.<sup>93</sup>

In the context of this paper, the political behavior by the transnational tobacco companies (TTCs) is interesting for three reasons. Firstly, the action took place at national and international level at the same time. As WTO litigation is a very costly affair, the traditional view is that firms only resort to lobbying for WTO action after all other options have been exhausted.<sup>94</sup> However, the TTCs were engaged in lobbying for WTO litigation, while at the same time also pursuing investor state arbitration in the context of a BIT and a domestic court case in Australia. The recourse to several different policy arenas is unusual. In the presence of high levels of uncertainty on the outcome of different levels of action, it seems likely that the TTCs saw the choice of several different arenas as the most effective way to secure a positive outcome. Brooks has argued that, even in the US domestic context the complexity of trade policy-making requires a meta-strategy, which, although it may appear to consist of 'do everything and see what works', is in fact a conscious integration of sub-strategies which are mutually supportive.<sup>95</sup>

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<sup>89</sup> Marsoof 2013.

<sup>90</sup> Mitchell and Wurzberger 2011; Voon and Mitchell 2012.

<sup>91</sup> PMAL 2015.

<sup>92</sup> Fooks and Gilmore 2014.

<sup>93</sup> Miles 2015.

<sup>94</sup> Bown 2009.

<sup>95</sup> Brooks 2005 : p.19.

Pursuing such a ‘meta-strategy’ also provides the opportunity to shift the framing of the key points at issue to the most supportive arena, as the outcomes at different levels emerge.<sup>96</sup>

Secondly, the choice of governments for CPA in this case was unusual. Finding common interests with a member state of the WTO was an inevitable step in mounting a multilateral challenge. As highlighted above, only states can bring cases against other governments’ policies in the WTO. However, one would have expected BAT or PMI to lobby their home state (the US) to challenge the Australian legislation in WTO – rather than Ukraine, Honduras, the Dominican Republic, Cuba or Indonesia. In the case of tobacco, the reason for the recourse to host countries seems to lie in the limited political influence of these companies in their ‘home’ countries. Like in the gambling case above, tobacco is considered a ‘sin industry’ and thus suffers from a growing lack of political support. This is especially so in developed countries with increasingly extensive and well-established tobacco control regulation.<sup>97</sup> Non-governmental actors have been an important factor in this evolution, with an ‘epistemic community’ of NGOs, academics and public health professionals increasingly capable of challenging the strategies of tobacco companies internationally.<sup>98</sup> As a result, the chances of persuading a home country of one of the TTCs to pursue a case were low and the pool of likely target states for CPA beyond their home countries was relatively limited.<sup>99</sup>

Thirdly, none of the plaintiff countries in the PP case was a significant exporter of tobacco products to Australia. They were unlikely to be strongly affected by the new restrictions and thus subject to rather limited compensation, even if the case were to be ruled in their favor.<sup>100</sup> This is not the first time a country without a direct trade interest has challenged another member state’s policy in WTO. The US challenged the EU’s banana regime, in spite of having no banana exports. This was largely because several large US based MNEs, with political influence in Washington, had substantial foreign direct investments (FDI) in countries negatively affected

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<sup>96</sup> Bach and Blake 2016.

<sup>97</sup> Holden and Lee 2009.

<sup>98</sup> Mukherjee and Ekanayake 2009.

<sup>99</sup> Fooks and Gilmore 2009.

<sup>100</sup> Fooks and Gilmore 2009; Curran and Eckhardt, 2017.

by that regime.<sup>101</sup> The choice by the complainant countries to pursue the PP case seems likely to be related, not to outward FDI, but rather to inward FDI.

The tobacco industry is among the most concentrated in the world:<sup>102</sup> four MNEs control more than half of the global tobacco market outside China.<sup>103</sup> TTCs are present worldwide and although their geographic coverage varies depending on their individual histories, one, or several TTCs are active on most world markets. Production facilities are more concentrated, with a few large factories often serving as hubs for local regions.<sup>104</sup> This gives the companies political leverage with some host states.<sup>105</sup> Like Antigua in the gambling case, these countries are part of the 'rent chain' of the TTCs and therefore legitimate targets for CPA.

Aside from Cuba, the complainants in the PP case generally have an important presence of TTCs, including through processing facilities<sup>106</sup>. Like Antigua, the complainants are relatively small and/or developing states, with limited administrative capacity.<sup>107</sup> However here too, the MNEs involved provided material support. BAT is paying the legal expenses of Honduras and Ukraine, while PMI has paid those of the Dominican Republic.<sup>108</sup> The case thus represented a major financial investment for the TTCs and can be seen as, for all intents and purposes, a continuation of their CPA at national and bilateral level through the multilateral system.

The use of their economic leverage and provision of material support by TTCs does not alone explain the countries' decision to challenge the legislation. These countries are all tobacco or cigarette producers, even if the importance of the sector varies. Their challenge is thus also related to their concerns, shared with TTCs and producer countries, about the impact on their global exports of regulatory 'spill over'. Several other countries including the UK, New Zealand and France were actively debating similar legislation as Australia's became operational.<sup>109</sup> The

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<sup>101</sup> See Cadot and Webber 2002 for an extensive analysis of the banana dispute and its motivations.

<sup>102</sup> Holden and Lee 2009.

<sup>103</sup> These four companies are: Philip Morris International (home economy: US); BAT (UK); Imperial Tobacco (UK); Japan Tobacco International (Switzerland).

<sup>104</sup> Mukherjee and Ekanayake 2009

<sup>105</sup> Holden and Lee 2009.

<sup>106</sup> Curran and Eckhardt, 2017

<sup>107</sup> Lindeque and McGuire 2007; Davis 2009.

<sup>108</sup> Jarman 2013 ; Scott Kennedy 2014.

<sup>109</sup> Scott Kennedy 2014.

uncertainty created by a legal challenge at WTO can delay the introduction of similar legislation elsewhere – so called ‘regulatory chill’ – containing the threat.<sup>110</sup> Thus a key advantage of a WTO challenge, is that it can have a regulatory impact well beyond the targeted state.

What the case demonstrates is that the fact that dispute resolution in the multilateral trading system is only open to states, has opened the possibility for MNEs to lobby countries in which they have an important economic presence, to represent their interests at the multilateral level. Thus perceived dependence on an MNE can secure the leverage required with host governments to access the multilateral system. This mode of CPA is very different to that proposed by Baron, although it reflects his forecast that, as WTO became more important “...nonmarket strategies will be directed at influencing governments in which the company has located components of its rent chain to position issues strategically at the WTO...”.<sup>111</sup> The PP case is an example of precisely such a strategy.

## **5 A revised conceptual framework of international CPA in the trade arena**

In this section we draw on the case study material presented above to answer our key research question of the impact of globalization of value chains and trade governance on trade CPA. On that basis, we propose a revised framework to understand trade policy-making, reflecting these evolutions. The above analysis highlights that trade policy CPA is no longer a solely domestic activity, focused on clear domestic interests. Rather, it has become a multi-level process, operating across national/regional and multilateral axes, as interests increasingly cross borders and jurisdictions. The cases discussed above demonstrate the emergence of lobbying coalitions combining domestic (import dependent) firms and ‘foreign’ companies; as well as lobbying of ‘host’ countries to take action, both against ‘home’ countries and against third countries. As MNEs have expanded their impact across their GVCs and shifted the fora of their CPA, so non-state actors, especially NGOs, have evolved their own global strategies, including supportive

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<sup>110</sup> Certainly TTCs used the argument of legal uncertainty created by the WTO case to argue against similar legislation elsewhere. See for example, in Ireland, PJ Carroll and Co 2014 and PMI 2014.

<sup>111</sup> Baron 1997 : p.164.

lobbying with MNEs where they have shared interests and counteractive lobbying when interests are opposed. In Table 1 we providing a summary of the cases explored above along the main dimensions of the actors involved and their market and non-market context. The Kodak/Fuji case is included to highlight the main changes since Baron published his work in the mid-1990s.

Table 1 – Actors involved and main dimensions of market and non-market context in the cases analysed

<b>Dimension</b>	<b>Kodak/Fuji</b>	<b>Antigua-US</b>	<b>EU-China footwear</b>	<b>EU-China solar</b>	<b>Australia PP</b>
Formal complainant	Kodak	Antigua	EU footwear manufacturers	EU solar panel producers	Ukraine, Honduras, DR, Cuba, Indonesia
Focal companies involved in CPA	Kodak	US gambling companies	EU importers (and Chinese exporters)	EU importers (and Chinese exporters)	Transnational Tobacco Companies
Non market environment in home country	Political influence	Little political influence: nature of industry (Sin).	Little political influence : importers seen as less 'productive' than manufacturers	Little political influence : Importers seen as less 'productive' than manufacturers	Little political influence: nature of industry (Sin).
Market environment	Global duopoly	A few large companies.	Importers highly concentrated and organized. Producers more dispersed, but well organized.	EU installers highly dispersed; Chinese producers more concentrated. EU producers concentrated.	Oligopoly. Four large companies control most of the world market
Trade policy context	Domestic	Multilevel	First regional (EU) then multilateral	Regional (EU)	National, bilateral and multilateral

					simultaneously
<b>Key actors</b>					
Local producers	yes	no	yes	yes	limited
Foreign MNEs	yes	yes	In latter stages	yes	yes
WTO	subsequently	yes	subsequently	no	yes
Regional institutions	no	no	yes (EU)	yes (EU)	yes (BIT)
NGO influence	no	yes (counteractive)	no	yes (supportive)	yes (counteractive)

**Source – Own elaboration**

Our above analysis provides strong evidence that the traditional two country model of trade disputes, focused on importers in one country and exporters in the other, is outdated. Our understanding of CPA in trade policy needs to expand to include, on the one hand, third countries and, on the other, NGOs, which can be as active in the political arena as states or MNEs and whose actions have impacted, directly or indirectly, on the gambling, solar panel and tobacco cases discussed above. The main conclusion from our case analyses is that the international trade policy framework is now significantly more complex than suggested by Baron and others and, therefore, his conceptual framework needs to be revised.<sup>112</sup> In order to clarify the bases for our revisions, Table 2 highlights our key findings on the evolution of MNEs strategic responses to the changed global context. It provides a detailed summary of the novel aspects of the cases discussed above, the motivations for these innovative CPA practices and their organization. The Kodak/Fuji case is again included for comparison. In this case, the highly concentrated nature of the industry posed no collective action problems, with the main issue being trade access, rather than investment, the target country being the home country and no indication that NGOs were active.

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<sup>112</sup> Brook 2005 has already highlighted that, even in the domestic sphere, the context was more complex than suggested in Baron's work.



Table 2 Motivations and organization of novel CPA actions in the Cases covered

		Why engage in CPA?		How organised?		Choice of CPA strategy?				Other
Case	CPA actor of interest	Threat to business model?	High costs to adjust?	Concentrated industry?	Ad hoc lobby group?	Domestic political disadvantage (why?)	FDI dependent. relevant?	Trade dependent. relevant?	Country lobbied	NGOs active? (direction of impact)
Kodak/Fuji	Kodak	Yes	Yes	Yes	No	No	No	Yes	US	No
Gambling	US gambling firms	Yes	Yes	Yes	Yes	Yes (sin)	Yes	No	US; Antigua	Yes (very negative)
Footwear	EU importers	Yes	Yes	Yes	Yes	Yes (importers)	No	Yes	EU and China	No
Solar	EU importers and CN exporters	Yes	Yes	No	Yes	Yes (importers)	No	Yes	EU and China	Yes (positive)
Tobacco	TTCs	Yes	Yes	Yes	No	Yes (sin)	Yes	No	5 various	Yes (very negative)

Source – own elaboration.

In Figure 1, we draw on the findings summarized above to propose a modified policy framework, based on Baron's, but reflecting both changes in trade governance and the move from domestic to transnational CPA. Although our framework reflects a two country model – country A (the exporter) and Country B (the importer) - the homogeneous two industry/interest model is deconstructed, while the possibility that companies will lobby beyond their home state is acknowledged.

An important change in the framework is to deconstruct ‘domestic’ interests to take account of their increasing diversity. In the case of the exporting country A, bilateral trade policy priorities would traditionally be focused on the interests of domestic industries, which export their products to Country B and have an interest in maximizing market opening. However, the involvement of foreign investors (FI) on the territory of country A, opens up the possibility that the interests of these firms may be undermined by the regulatory actions of Country B, even in cases where Country B is their home state or where most of the effects of Country B’s actions are outside Country A. In the event that home country (i.e. Govt B) lobbying fails (as in the gambling and tobacco cases) CPA aimed at mobilizing the capacity of the (host) country (i.e. Govt A) to address the issue at the multilateral level, becomes an option.

Table 2 provides indications of the factors influencing the strategic decision to lobby outside the ‘home’ state (political disadvantage) and the choice of host country (dependence on FDI or trade). These issues are discussed in more detail below. Such transnational CPA may occur even in cases which are only related to Country A’s interests indirectly, or over the long term (as in the tobacco case). In addition, depending on the level of openness of its political system, civil society may be active in country A on the issue areas of interest to companies. This could be for example in the form of trade unions worried about the employment impacts of MNE withdrawal, or through NGOs militating on related issues like environmental protection (in the solar case) or tobacco and gambling control (in the tobacco and gambling cases).<sup>113</sup> In the case of the importing country B, governments are increasingly being lobbied, not only by import-competing local producers seeking protection, but also by import-dependent firms (IDFs) who are vehement supporters of trade liberalization (as evidenced in the footwear and solar cases and highlighted in Table 2).

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<sup>113</sup> See Mukherjee and Ekanayake 2009 on NGOs in the tobacco control arena and Farrand 2015 on the effectiveness of NGO lobbying against ACTA, a trade agreement rejected by the European Parliament.

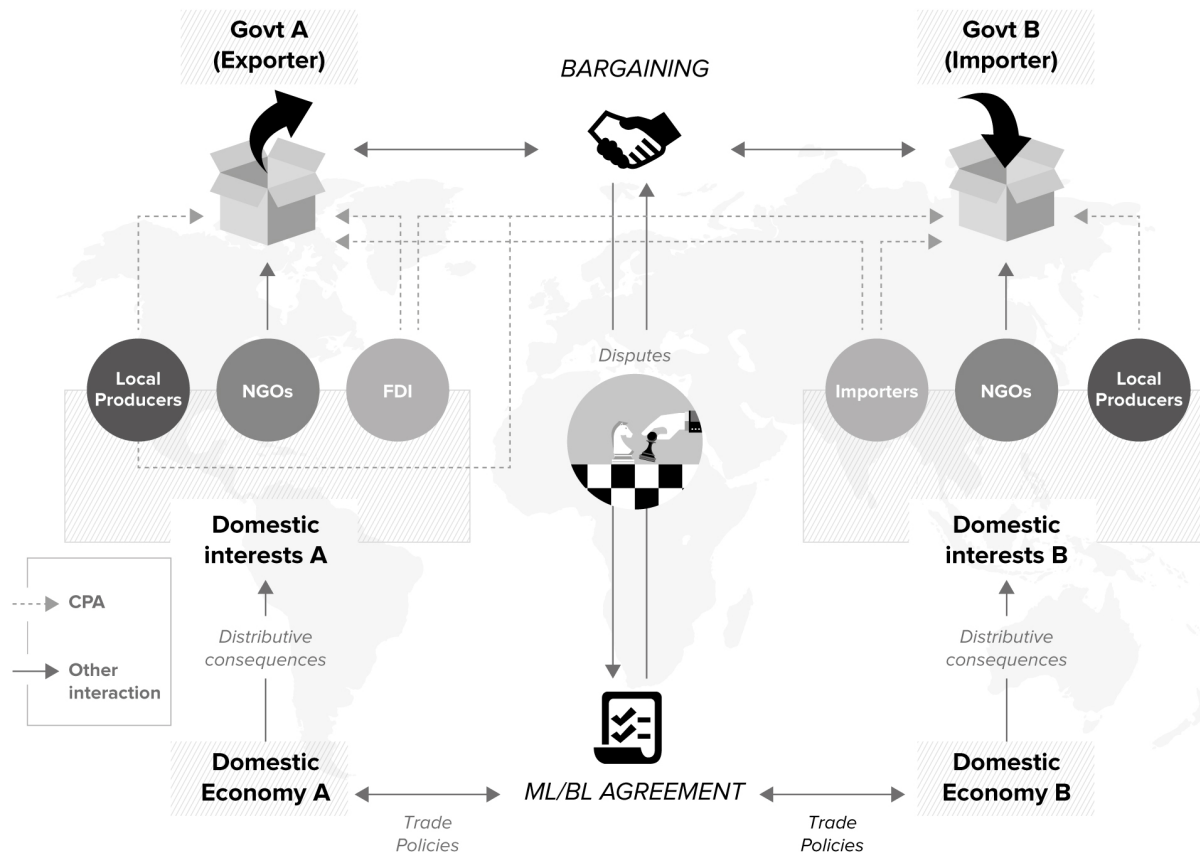


Figure 1 - Modified international trade policy framework

One further evolution we note is that companies also lobby countries outside of even their host country policy space. Providing that they have a positive impact on the country's economy, for example through their imports, MNEs can have political leverage, even in the absence of FDI. In the case of recourse to action at the multilateral level, the same alliance of import-dependent firms (IDF in our framework) in country B and exporters in country A, which lobbies against trade protection in the former, may lobby country A to take action against country B. This happened in the footwear case, when the Chinese government was lobbied by EU importers to challenge the case at the WTO. In this case, EU import-dependent firms had essentially no FDI in China, which we would expect to be a prerequisite for leverage or legitimacy in such CPA. The presence of a large share of their GVC in China was sufficient to create common interests with local exporters and facilitate successful CPA there.

Of course not all firms are willing, or able, to pursue an international CPA strategy. Based on our analysis and existing work, we suggest that the following conditions are necessary for companies to engage in the type of transnational lobbying described here. Firstly, the firm in question must be confronted with both a policy measure that poses a serious threat to its material interests and high expected adjustment costs. As Lawton and McGuire have pointed out, there are several potential adjustment strategies available to companies in response to trade policy changes, but the feasibility of these strategies varies extensively across industrial sectors.<sup>114</sup> The likelihood of political action is particularly high when adjustment options are limited and firms thus face high costs from policy change.<sup>115</sup>

A second key reason for transnational lobbying, highlighted in Table 2, is that the home government is unresponsive to company demands. This may be because firms are seen as less important for the domestic economy than more productive firms. Retailers are a good example, as they are often seen to be less economically valuable than manufacturers.<sup>116</sup> As discussed above, EU footwear retailers resorted to transnational CPA in the footwear case for exactly this reason. The other key reason we identify for a potential lack of political leverage is that the firms in question are considered to be morally suspect (i.e. “sin” industries). Gambling and tobacco firms are clear examples and their transnational lobbying is evident in the gambling and PP cases discussed above. Especially in the case of such ‘sin’ companies, their main challengers in policy disputes are not competitor companies,<sup>117</sup> but civil society actors like NGOs, doctors, religious groups and academics. The extensive mobilization of civil society against them in the domestic sphere undermines their chances of securing political support. Seeking such support in a less conflictual environment – through transnational lobbying – is the most rational strategy, particularly if the objective is to access the international trade governance regime. Although this trend is most evident for ‘sin’ companies, the growing political power of NGOs also has implications for companies with less obvious negative

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<sup>114</sup> Lawton and McGuire 2005.

<sup>115</sup> Destler and Odell 1987; Eckhardt 2015; Kolk and Curran 2016.

<sup>116</sup> Eckhardt 2015.

<sup>117</sup> As presented in Baron 1997 but also in much more recent work, for example Kanol, 2015.

externalities, like increased pollution or obesity.<sup>118</sup> Thus in the wider CPA sphere, it seems likely that we will see increasing cases of conflicts on regulatory issues which pitch companies, not against each other, but against civil society actors, with consequences for their political influence.<sup>119</sup>

Thirdly, the companies in question need to be able to overcome collective action problems, identify a legal line of attack and access the policy-making machinery in a foreign country. None of these is straightforward to achieve. International CPA for WTO action is even more time and resource consuming than traditional dispute initiation through domestic CPA. Only the most internationalized firms, operating in well-endowed sectors, with a high concentration ratio and a high mobilization rate are likely to be able to engage in such a strategy.<sup>120</sup>

## **6 Contributions, limitations, and future research**

In this paper we address the question of how the globalization of production networks and expanded trade governance has impacted on CPA. We draw on a series of recent trade conflicts to identify several changes in CPA in the international trade policy arena, which we believe are strategic responses to the globalization of production and the expansion in coverage, as well as complexity, of the international trade governance regime. In doing so, we contribute to the literature which seeks to explain how CPA adapts to changes in the institutional environment.<sup>121</sup>

Firstly by highlighting how, as trade and investment liberalization has facilitated cross-border integration of production networks, the range of 'domestic' companies that get involved in trade politics has expanded. In particular, import-dependent firms have become increasingly active. Secondly, we find that the emergence of global and multi-level governance of trade policy has led to a shift in the targets of CPA. Transnational lobbying activities and political activity outside the home country have become more common, in particular with the objective of accessing the WTO DSB, but also to fight (regional) protectionism. Finally, we also note an increase in transnational advocacy by NGOs, who seek to impact on the governance of GVCs,

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<sup>118</sup> Lock and Seele 2016

<sup>119</sup> Lucea and Doh, 2012.

<sup>120</sup> Bown 2009.

<sup>121</sup> Lawton et al, 2009; Lawton et al. 2013.

both in cooperation with MNEs and in opposition to them. We have argued that, as a result of these evolutions, the positions of companies, NGOs and even states on important trade issues can only be understood in the light of the complex interlinkages which characterize the contemporary world economy and the shared interests they create.

The main objective of this paper has been to better integrate these interactions into the conceptual bases of international CPA, by revising Baron's framework developed in the 1990s.<sup>122</sup> Clearly not all aspects of our revised framework are pertinent in any given trade dispute. We recognize that in most cases firms still lobby their domestic government to further their interests. However, we highlight several factors which are likely to stimulate MNEs to engage in such novel and 'transnational' CPA. In so doing, we expand our understanding of the motivations for company CPA, a key concern in the literature.<sup>123</sup> We hope that our framework will help trade policy scholars to better illuminate the role of different actors and their alliances and more effectively analyze how final policy outcomes reflect these dynamics. In addition, we see several promising avenues for future research based on the revised framework presented here, both focusing on the trade policy arena and on CPA in other issue areas affected by global integration.

Firstly, we see potential in work exploring how MNEs choose the political arena in which they play out the policy conflicts which they seek to resolve. In this paper we have focused on the multilateral (WTO) and regional (EU) level. Although there are good reasons to believe that CPA at this international level is likely to continue to expand,<sup>124</sup> the complexity and dynamic nature of such institutions, particularly at multilateral level, also make outcomes there quite uncertain.<sup>125</sup> This limits the attractiveness of this level as a venue for resolving disputes. MNEs need to make choices on how to allocate scarce corporate resources across the different levels of potential operations, which implies making judgments on what level is likely to be the most productive.<sup>126</sup> We know little about the driving factors behind these choices. In this paper we

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<sup>122</sup> Baron 1995; 1997.

<sup>123</sup> Doh et al. 2015; Hillman et al. 2004; Lawton et al. 2013; Shaffer, 1995.

<sup>124</sup> Lawton, Lindeque and McGuire 2009.

<sup>125</sup> Levy and Prakash 2003.

<sup>126</sup> Windsor 2007.

have highlighted some characteristics likely to encourage MNEs to undertake transnational CPA, however more work needs to be done to better understand the motivating and constraining factors behind such strategies.

Secondly, as shown in this paper, the emergence of GVCs has had an important impact on the type of actors involved in policy debates, their policy preferences and the incentives they face when deciding to mobilize politically. Ultimately, we believe that GVCs also impact on how public and private actors interact to produce particular policy outcomes. However, more work is needed that systematically investigates the implications of GVCs for CPA. It is clear from our analysis that the fact that many companies are now embedded in transnational GVCs means that their most likely corporate partners for CPA may be found, not in their domestic trade associations, but in their partners along the value chain. In the footwear, gambling and solar cases discussed in this paper, we witnessed the establishment of cross border ad-hoc lobby groups specifically set up as vectors for CPA on the case in question. Such temporary, single issue structures have provided important conduits for cooperative lobbying in several recent cases, expanding the ‘coverage’ of the coalition,<sup>127</sup> while challenging traditional ideas about the necessary preconditions for collective action.

Thirdly, the expanding role of civil society in policy-making creates both new threats and opportunities for MNEs. NGOs have been seen to be very effective at mobilizing around regulatory issues at national and international level, including on issues indirectly related to trade policy like public health<sup>128</sup> and sustainable production systems,<sup>129</sup> as well as directly on trade policy itself.<sup>130</sup> In the cases explored here, NGOs have impacted on MNE CPA both by campaigning against company interests (gambling and tobacco) and in their support (solar panels). CPA theory thus needs to expand its focus from a traditional view, where governments are the main actors in the regulatory process, to better incorporate the role of non-state actors. MNEs often interact with NGOs in their corporate social responsibility (CSR) actions, but this work is frequently divorced from, and even incoherent with, their CPA activities. Several

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<sup>127</sup> Baron, 1999

<sup>128</sup> Mukherjee and Ekanayake 2009.

<sup>129</sup> Levy, Reinecke and Manning 2016.

<sup>130</sup> Farrand, 2015; Schnietz and Nieman 1999

scholars have recently argued that this is problematic and that there is a strong case for MNEs to better reconcile these two non-market activities.<sup>131</sup> Such efforts would also increase the potential to build alliances. However, beyond their CSR activities, very little work has addressed how companies can more effectively work transnationally with civil society to achieve common interests. There is certainly potential for further research in this area.

Finally, recent changes in the international political climate, especially Brexit and the US election outcome, pose questions for the continued integration of both GVCs and trade governance. Brexit will pose challenges to the EU and remove an important advocate of trade openness from the Union.<sup>132</sup> The Trump administration has threatened to withdraw from the WTO in the case of rulings against new trade restrictions.<sup>133</sup> Such evolutions highlight that protectionist forces continue to mobilize strong political support, posing major problems for globally integrated MNEs and requiring them to continually readjust their CPA, revising alliances and targets. This paper underlines the fact that CPA evolves in reaction to opportunities and challenges created by the institutional environment. We expect this evolution to continue in response to future changes, requiring scholars to regularly adjust their understanding of how CPA is best structured and organized.

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<sup>131</sup> Den Hond et al. 2014; Lock and Seele 2016.

<sup>132</sup> Nordstrom, 2016.

<sup>133</sup> Dyer 2016



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